

**CLAS CIRCULAR**  
**2008/14 (21 August 2008)**

# FUNDING

## Gift Aid Transitional Relief

Following Royal Assent to the Finance Bill and the Appropriation Bill, HMRC is now authorized to pay the transitional relief in respect of Gift Aid repayment claims on donations received on or after 6 April 2008. Charities entitled to Gift Aid Transitional Relief will be paid automatically and sent an explanation. ***Charities themselves do not have to do anything.***

From now on, tax repayments on Gift Aid donations made on or after 6 April 2008, will automatically include Gift Aid Transitional Relief where it is due in addition to the tax claimed.

[Source: *HMRC What's New* – 13 August 2008]

## ODDS & ENDS

### Licensing reform

DCMS has announced a package of minor measures of reform to the licensing laws. In future any pub, village hall, off-licence or other licensed premises that wants to make a minor change to the terms of its licence, such as a small-scale refurbishment, will be able to use a cheaper, simpler and quicker process to vary its terms – *so long as the change will not affect the licensing objectives and does not involve alcohol.*

The Department has also published proposals to reduce bureaucracy and costs for village and church halls and similar community premises that sell alcohol. Instead of the current system, under which licensed premises must have a named premises supervisor with responsibility for authorising all sales of alcohol (who must complete a training course), DCMS is proposing new arrangements under which a management board or committee would have collective responsibility for the licence and supervision of the premises and the sale of alcohol. The licence could still be reviewed if residents, the police or any other responsible authority had concerns; and such a review could lead to the reinstatement of the requirement for a designated premises supervisor.

A 'minor variation' will be defined as any change that 'could have no adverse effect' on the promotion of the licensing objectives. Local authorities will have the power to decide if a variation to the licence is 'minor', that is, whether it could have any adverse impact on the licensing objectives. However, the following changes relating to alcohol will be legally excluded from the minor variation process:

- the addition of the sale or supply of alcohol to a licence or club premises certificate;
- the sale or supply of alcohol at any time between 11pm and 7pm; and
- any increase in the amount of time on any day during which alcohol may be sold or supplied.

The proposal applies only to 'community premises', which are defined as premises that are or form part of part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building. The proposal will also apply only to premises with a formal management or executive committee. The consultation closes on 1 September.

Those who wish to respond should complete the relevant [questionnaire](#) at Annex 1 and send it by email to [licensingconsultation@culture.gov.uk](mailto:licensingconsultation@culture.gov.uk) or by post to Nigel Wakelin, Licensing Team, Sport and Leisure Directorate, 2–4 Cockspur Street, London SW1Y 5DH

[Source: *DCMS News* – 4 August 2008]

## VAT: buildings and the zero rate

### [Abercych Village Association v HM Revenue & Customs \[2008\] UKVAT V20746 \(17 July 2008\)](#)

*VAT – zero-rating – addition to village hall – whether an extension or an annexe? – Note (16) Group 5 Schedule 8 VATA? – whether largest access was the main access? – Note (17)*

This was an appeal against HMRC's decision that building works undertaken at Abercych village hall did not qualify for zero-rating under Item 2 Schedule 8 Group 5 VAT Act 1994. The building works consisted of the construction of a meeting room, a kitchen, lavatories, a disabled lavatory and a corridor adjacent to the village hall. The principal questions before the tribunal were:

- whether or not the works constituted an extension to, or annexe of, the village hall; and
- what was the main access to the existing and new structures.

HMRC did not dispute that the Abercych Village Hall and the new works were intended for use for a relevant charitable purpose within the scope of Item 2 Group 5 Note (6).

The appeal was dismissed. The tribunal concluded, on the facts before it, that the new works were an extension to the old hall and therefore excluded from the scope of Item 2 Group 5 by Note 16(b), even though they might be an annexe within the terms of Note 16(c). They were not, therefore, to be zero-rated. However, the tribunal also concluded (at paragraph 61) that:

*Had we found that the new works were not an extension then we would have found that Note 17 saved them from Note 16 thus permitting their zero-rating. That is because we find that the new works are 'capable of functioning independently from the existing building'... and because it seemed to us that at least one of the main means of access to the new works was via their own door, and at least one of the main means of access to the old hall was via the old kitchen door... These were the most convenient means of access in each case and therefore 'main' accesses. Thus the main access to each building was not via the other.*

The particular interest of this decision is this: the tribunal noted that counsel for HMRC had indicated that if HMRC had been approached at the planning stage, *it might have been possible to agree plans which were acceptable to HMRC as giving rise to an annexe and not an extension.* This should be borne in mind for the future. Anyone planning an extension to a church hall or similar building would be well advised to contact the local VAT office at an early stage, to see whether the building can be designed so as to qualify for zero-rating.

[Source: *BAILII* – 18 July 2008]

# TAXATION

## Income tax: filing deadlines

***HM Revenue & Customs has issued a reminder that the deadline for filing paper self-assessment tax return this year is 31 October. The penalty for failure to file is £100.***

The deadline for filing online returns remains 31 January. *However, it is not possible for ministers of religion file online unless they use third party software, notwithstanding that:*

- the tax return paperwork that is sent out requesting a return includes a flier (SA 100) encouraging online assessment;
- the front page of the return booklet for ministers (HMRC 12/07) refers to filing online; and
- *How To Fill In Your Tax Return* (the guide for ministers of religion: SA150-2MS(2008)) asks on the front page "Why not file online?"

Once you have filed your return, any tax due has to be paid by 31 January, whether you have filed in hard copy or on-line.

The purpose of this reminder is to make sure that clergy are not lulled into a false sense of security, only to find that they do not have the correct software and miss the deadline.

We understand that the reason why the HMRC generic software cannot handle clergy tax returns is because they are unusually complicated in comparison with those of the general run of taxpayers; and there are not thought to be enough clergy to warrant the cost of the development work that would be necessary to update the software. We propose to take this up with HMRC – but there is no possibility whatsoever of the situation changing in time for the filing deadline, so ***clergy should take appropriate action now***, in order to avoid being caught out.

[Source: *HMRC What's New* – 19 August 2008]

## Subsistence rates

HMRC has published an [updated list of expenses](#) for employees travelling outside the United Kingdom.

[Source: *HMRC What's New* – 8 August 2008]

## VAT: treatment of charity challenge events

[Revenue & Customs Brief 36/08](#) sets out HMRC's revised guidance on Charity Challenge Events, including those that qualify for the VAT Charity Fundraising

Exemption. Many charities use such events, for example running, walking and cycling, to raise funds through sponsorship of the individuals who take part.

Following representations from the charity sector, HMRC has now produced revised guidance with examples and a flowchart to be used with the guidance. The revised guidance is included as updates to Notice 701/1 Charities and Notice CWL4 Fund-raising events: Exemption for charities and other qualifying bodies. Update 1 to CWL4 revises the existing guidance in Section 3.15 of that Notice and cross-refers to the more detailed guidance now included as Update 2 to Notice 701/1 that introduces a revised section 5.9.4, cross-referenced to a new section 10 of that Notice.

The guidance took effect as from 31 July 2008. However, HMRC is aware that some charities are likely to have signed contracts some time before the events are due to take place. HMRC therefore accepts that where a contract for an event has been signed or negotiation with suppliers has started or the event has been publicised prior to the publication of the new guidance, charities can account for VAT using their previous procedures.

*HMRC suggests that charities may wish to revisit their previous records and make claims for VAT incorrectly treated in respect of previous contracts.*

[Source: *HMRC What's New* – 11 August 2008]

#### **VAT: fees of professional fundraisers**

##### **[Oxfam v HM Revenue & Customs \[2008\] UKVAT V20752 \(30 July 2008\)](#)**

This is a complicated case about the application of VAT to the fees of professional fundraisers – but it is important for charities that use their services.

Prior to the High Court decision in [Church of England Children's Society v Commissioners of Revenue and Customs \[2005\] STC 1644](#), (“CECS”) the consensus was that donations received by charities constituted non-business income, so the VAT incurred on the fees of professional fundraisers was irrecoverable as it did not count as input tax. In *CECS*, however, the High Court decided at paragraphs 28–29 that receipt of unrestricted voluntary donations was *not* a supply for VAT purposes and the income was therefore outside the scope of VAT; *however*, since the unrestricted voluntary income from donations was, by its nature, available to fund all the Society’s activities, some of which were business activities for VAT purposes, the VAT incurred on unrestricted fundraising expenditure was recoverable by the Society *in part*.

Oxfam claimed repayment of VAT on the fees of professional fundraisers engaged to procure regular donations from members of the public, usually by approaching them in the street. HMRC refused the claim and Oxfam appealed.

Oxfam sought to recover a proportion of the VAT incurred on the fees of professional fundraisers for the period 1 August 1997 to 30 September 2005 in two ways. First, the VAT on professional fundraisers' costs increased the amount of VAT which was subject

to an apportionment between business and non-business activities. Secondly, Oxfam contended that the application of the formula previously agreed with HMRC in October 2000, which determined the apportionment percentage for business and non-business activities, enhanced the amount of VAT that could be recovered as input tax. HMRC conceded that Oxfam was entitled to recover that part of the VAT represented by the increased amount available for apportionment which accounted for a substantial portion of the subsequent repayment of £2,548,590.21. The dispute between the parties concerned the application of the October 2000 formula agreed between HMRC and Oxfam for determining the apportionment percentage (the "*Approved Method*").

Under the *Approved Method*, the apportionment percentage was calculated by dividing Oxfam's VAT exclusive expenditure on its business activities by the total of its VAT exclusive expenditure on its business and non-business activities. According to Oxfam, the effect of the decision in *CECS* was that the denominator of non-business expenditure no longer included the expenditure on professional fundraisers, in which case the apportionment percentage increased from about 75 per cent to 85 per cent.

Oxfam submitted that the HMRC was bound by the *Approved Method* in respect of VAT repayment claims for the period 1 August 1997 to 30 September 2005. Oxfam accepted that HMRC was entitled to amend the *Approved Method* but only in respect of prospective repayment claims from the date when HMRC indicated its intention to amend – which was on 30 May 2006. HMRC countered that the dispute was not, strictly speaking, the effect of the decision in *CECS*, but whether HMRC was bound by the *Approved Method*. HMRC argued that it was a public body with statutory functions and it was only permitted to allow VAT claims on returns or voluntary disclosures that were referable to Oxfam's business purposes. HMRC further argued that it was not bound by the *Approved Method* because it allowed Oxfam to recover a level of input tax that was not envisaged when the *Method* had been agreed; and the *Method* was not fair or reasonable with reference to Oxfam's business activities. In short, the *Approved Method* was acting as an unlawful fetter on HMRC's statutory functions.

The issues for determination as expressed by HMRC were:

- (1) Did the *Approved Method* constitute a binding contract?
- (2) If the answer was 'yes' to question (1), was the contract subject to an implied term that it would not apply if subsequent legal developments significantly changed the basis upon which the agreement was made?
- (3) If the answer was 'no' to question (2), then the *Approved Method* was unlawful and *ultra vires*.

Oxfam contended that an analysis of the parties' intentions demonstrated that the *Approved Method* was essentially a binding contractual arrangement between the parties until HMRC withdrew its approval or Oxfam applied to vary it. Oxfam also disagreed with HMRC's principal submission that HMRC was not entitled to contract out of its statutory responsibilities. Although HMRC had a duty to collect VAT according

to the law, it also had a general power of care and management in relation to the tax (paragraph 1 schedule 11 VAT Act 1994) under which it could settle claims and compromise disputes. HMRC's ability to make agreements in order to meet its statutory responsibilities was an established principle applicable to the whole area of taxation.

The Tribunal concluded that

*... there was no evidence of intention on the part of the parties to create contractual relations with the Approved Method. There was no meeting of minds. The Appellant continued with its existing method. The Respondents followed the steps laid out in their internal guidance.*

Moreover, the decision in *CECS* was of limited scope because the High Court only went as far as ruling that *some* of the VAT incurred on unrestricted fundraising expenditure might count as input tax dependent upon whether the expenditure was used for business purposes and for taxable supplies. That decision had no direct effect on the methods used by taxpayers to apportion VAT between business and non-business activities.

Appeal dismissed.

# **WATER**

## **Recent developments**

Members may wish to know that the Archbishop of York has written to the Prime Minister urging the Government to reconsider the policy on charges for water runoff. At the same time, CLAS has requested a meeting with the responsible Minister in the House of Lords. We await further developments.